

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

NICK SPEARS, INDIVIDUALLY, AND  
ON BEHALF OF OTHERS SIMILARLY  
SITUATED,

Plaintiffs,

v.

MEDROBOTICS CORPORATION,  
SAMUEL STRAFACE, INDIVIDUALLY,  
MARK PETERS, INDIVIDUALLY,

Defendants.

Civ. Action No. 1:20-cv-10535-RGS

**DEFENDANTS' LIMITED OPPOSITION TO THE PLAINTIFF'S  
MOTION TO VACATE THE DISMISSAL**

NOW COME the Defendants, Medrobotics Corporation ("Medrobotics"), Samuel Straface, and Mark Peters (collectively as the "Defendants") and pursuant to Fed. R. Civ. P. 60(b), submit this limited opposition to Plaintiffs' August 26, 2021 Motion to Vacate the Dismissal. As grounds for their Opposition, the Defendants assert that arbitration of the approximately twenty-seven (27) claims was sought in good faith. Indeed, at all relevant times, the Defendants expected to receive funds that would enable the arbitration and/or settlement discussions to continue.

In this matter, the Defendants promptly sought enforcement of the arbitration clause in a Motion to Dismiss the First Amended Complaint and Compel Arbitration. The Court properly allowed the Defendants' Motion and dismissed the case. After dismissal of the matter, the

Plaintiffs filed twenty-seven (27) cases at the American Arbitration Association (“AAA”).<sup>1</sup> The arbitration demands and corresponding complaints allege that the Defendants failed to pay wages in violation of the Massachusetts Wage Act and/or the Fair Labor Standards Act.

In the interests of time and resources, the parties agreed to arbitrate all twenty-seven (27) cases in one proceeding at the AAA. Even with that stipulation, the Defendants were still required to pay the AAA’s filing fee of \$1,900.00 per Plaintiff. In anticipation of private funding and Paycheck Protection Program (“PPP”) funds, the Defendants paid approximately twenty (27) filing fees. In April of 2021, the AAA circulated a list of potential arbitrators with experience in employment dispute resolution to the parties for review and ranking. The parties submitted their respective rankings to the AAA and an arbitrator was ultimately selected.

In early 2021, Medrobotics received PPP funds from the Federal government. Accordingly, in May of 2021, the parties began to discuss the parameters of a mediation and potential global settlement. However, these settlement efforts were stalled by a lien that the Department of Revenue (“DOR”) placed on Medrobotics’ PPP funds. Thereafter, over Medrobotics’ objection, the DOR levied approximately \$702,323.40 in PPP funds from the company’s corporate account. After the levy, the DOR applied the PPP funds as follows: (1) \$58,142.05 was applied to the Attorney General’s (“AG”) Civil Citation for Restitution; (2)

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<sup>1</sup> Nick Spears (case no.: 01-21-0001-8919), Christopher Barnes (case no.: 01-20-0014-7047), Mauricio Campbell (case no.: 01-20-0010-9129), Patrick Dickinson (case no.: 01-20-0014-5079), Bobby Gordon (case no.: 01-20-0010-9115), Rickey Kalicharan (case no.: 01-20-0014-4953), Ron Lewis (case no.: 01-20-0010-9123), Jim McClear (case no.: 01-20-0010-9122), Edward McIlhargey (case no.: 01-20-0010-8095), Keith Pautz (case no.: 01-20-0010-9314), Luis Perez (case no.: 01-20-0010-9112), Jose Raposo (case no.: 01-20-0010-9125), Paul Remillard (case no.: 01-20-0014-7790), Benjamin Scott (case no.: 01-20-0010-9114), James Jake (case no.: 01-20-0016-0437), James Ellsworth (case no.: 01-20-0016-0444), Hugh Tripp (case no.: 01-20-0016-0445), Jamie Maietta (case no.: 01-20-0016-0448), Karen Alberti (case no.: 01-20-0016-0450), Steve Kress (case no.: 01-20-0016-0456), Donna Giroux (case no.: 01-20-0016-0459), Danielle Lombardi (case no.: 01-20-0016-0460), Richard Walsh (case no.: 01-20-0019-2665), Anita Krauss (case no.: 01-20-0016-3883), Randy Haines (case no.: 01-20-0019-2641), Patricia Polatchek (case no.: 01-21-000-3242) and Valerie Balga (case no.: 01-21-0002-1036).

\$570,305.49 was applied to AG's Civil Citation for Penalties; and (3) \$73,875.86 was applied to preexisting outstanding state sales/use tax.

As a result of the DOR's lien and levy, Medrobotics does not have any (i.e. \$0) corporate funds to pay the arbitrator's fees and/or settle the employee wage claims pending at the AAA. Due to the above outlined issues, the settlement process has completely stalled. In order to resolve the employee wage claims, Medrobotics will need (1) release of the PPP funds and/or (2) additional private financing, which has not materialized to date. Despite these facts, Medrobotics remains hopeful that it can obtain funding in the future that will allow it to mediate all of the outstanding employee wage claims.

For the reasons articulated above, the Defendants, Medrobotics Corporation, Samuel Straface, and Mark Peters hereby submit this limited opposition to the Motion to Vacate the Dismissal.

Respectfully submitted,

**MEDROBOTICS CORPORATION, SAMUEL  
STRAFACE & MARK PETERS**

By their attorneys,



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Dated: September 3, 2021

**CERTIFICATE OF SERVICE**

I, Kenneth B. Walton, Esq., hereby certify that on September 3, 2021, the within document has been electronically filed with the United States District Court District for the District of Massachusetts and is available for viewing and downloading from the ECF system. I also served a copy of the foregoing document via email on:

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A handwritten signature in black ink, appearing to read "Kenneth B. Walton", with a long horizontal flourish extending to the right.

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Kenneth B. Walton, Esq.